

JUN 23 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	NO. 02-30148
)	
Plaintiff-Appellee,)	E.D. Wash. CR 01-188-FVS
)	
v.)	
)	MEMORANDUM*
JAMIESON DILLON FOSTER,)	
)	
Defendant-Appellant.)	
_____)	

Appeal from the United States District Court
for the Eastern District of Washington
Fred Van Sickle, District Judge, Presiding

Argued and Submitted April 11, 2003
Seattle, Washington

Before: D.W. NELSON, THOMAS, Circuit Judges, and D. PREGERSON,**
District Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** The Honorable Dean D. Pregerson, United States District Judge for the Central District of California, sitting by designation.

Jamieson Foster appeals the district court's denial of his motion to suppress under Miranda v. Arizona, 384 U.S. 436 (1966). We have jurisdiction pursuant to 28 U.S.C. § 1291. We reverse.

Before interrogating a defendant in custody, police officers must advise the individual of his Miranda rights. Miranda, 384 U.S. at 479. A person is “in custody” when, based upon a totality of the circumstances, a reasonable person in such circumstances would conclude that he or she was not free to leave. United States v. Kim, 292 F.3d 969, 973–74 (9th Cir. 2002). “By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been . . . deprived of his freedom of action in any significant way.” Miranda, 384 U.S. at 444.

Typical traffic stops are non-custodial for the purposes of Miranda, Berkemer v. McCarty, 468 U.S. 420, 439 (1984). Similarly, Terry-stops, executed by police officers with a reasonable belief that a person has committed, is committing, or about to commit a crime, see Terry v. Ohio, 392 U.S. 1 (1968), are also non-custodial for the purposes of Miranda. United States v. Brignoni-Ponce, 422 U.S. 873, 881 (1975). Terry-stops entail detaining a person briefly in order to provide the officers with the time necessary to investigate the circumstances that provoked their suspicion. *Id.* “Typically, this means that the officer may ask the

detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." Berkemer, 468 U.S. at 439.

In assessing whether Mr. Foster was "in custody," the only relevant inquiry is whether "a reasonable man in [Mr. Foster's] position would have understood his situation" to be one of police custody. *Id.* at 442. In looking at the "totality of the circumstances," we should consider: (1) the language and method used by the officers to summon Mr. Foster, (2) the extent to which Mr. Foster was confronted with evidence of guilt, (3) the physical surroundings of the interrogation, (4) the duration of the detention, and (5) the degree of pressure applied to detain Mr. Foster. See Alvarado v. Hickman, 316 F.3d 841, 846 (9th Cir. 2002).

Although the officers initially possessed sufficient cause to execute a valid Terry-stop of Mr. Foster, the nature of the officers' comments and accusations that followed take this case outside the recognized boundaries of a non-custodial Terry-stop and into one of police custody. See Kim, 292 F.3d at 976 ("If [the officers] had asked questions going beyond a brief Terry-type inquiry, [Mr. Foster] would, it appears, have been entitled to Miranda warnings.") (internal citation omitted).

Here, Mr. Foster (1) did not come to the police voluntarily but was stopped by a combined unit of four armed federal and local officers on a remote rural highway in Washington; (2) had three police and Border Patrol vehicles positioned in single file behind him; (3) was accused by the officers of being dishonest and engaging in the trafficking of illegal narcotics; (4) was informed that the officers had discovered a large quantity of illegal drugs nearby and that they believed he was in the area to pick it up; (4) had his driver's license and car registration seized; and (5) was pressured by the officers to be "honest" and to confess that the marijuana belonged to him. Under these circumstances, no reasonable person would have concluded that he or she was free to leave.

When Mr. Foster was accused by the officers of having perpetrated a serious felony in violation of federal law, the officers were no longer executing a non-custodial Terry-stop to investigate whether Mr. Foster was attempting to commit or had committed a crime. Rather, a reasonable person in Mr. Foster's position would assume that he was being held, not for the purposes of investigation, but because he was under arrest. As noted by the Supreme Court, "An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned." Stanbury v. California, 511 U.S. 318, 325 (1994). Here, Mr. Foster was explicitly accused by an officer of

intending to perpetrate and participate in a conspiracy to traffic illegal narcotics into the United States.

Accordingly, we hold that Mr. Foster was in police custody and should have been advised of his Miranda rights prior to being questioned. The district court's denial of Mr. Foster's motion to suppress is **REVERSED**; Mr. Foster's conviction is **VACATED**; and we **REMAND** for a new trial.